

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JAY KRUISE, :
 :
 Plaintiff : CIVIL ACTION NO. 3:21-543
 :
 v. : (JUDGE MANNION)
 :
 UNITED STATES DEPARTMENT :
 OF THE ARMY, *et al.*, :
 :
 Defendants

ORDER

In accordance with this Court's memorandum issued this same day,

IT IS HEREBY ORDERED THAT:

- (1) Judge Arbuckle's February 2023 report and recommendation, (Doc. 50), is **ADOPTED IN ITS ENTIRETY**. Just Arbuckle's September 2022 report and recommendation, (Doc. 32), is **NOT ADOPTED as moot**.
- (2) The defendants' motion to dismiss, (Doc. 18), is **GRANTED, IN PART**, and **DENIED, IN PART**.
 - a. Defendants' motion to dismiss as to Plaintiff's retaliation claim (Count III) is **GRANTED**. Plaintiff's retaliation claim in Count III is **DISMISSED with prejudice**.
 - b. Defendants' motion to dismiss as to Plaintiff's *Bivens* claim (Count IV) is **GRANTED**. Plaintiff's *Bivens* claim in Count IV is **DISMISSED with prejudice**.

- c. Defendants' motion to dismiss Plaintiff's Racial Discrimination / Disparate Treatment claim (Count V) is **GRANTED** with respect to claims related to incidents that occurred in 2014 and 2015 and **DENIED** with respect to the claims related to Plaintiff being placed on leave and his eventual termination. The claims in Count V related to incidents that occurred in 2014 and 2015 are **DISMISSED with prejudice**.
 - d. Defendants' motion to dismiss Plaintiff's claim for punitive damages is **GRANTED**. Plaintiff's punitive damages claim is **DISMISSED with prejudice**.
 - e. Defendants' motion to dismiss Plaintiff's remaining claims is **DENIED**.
- (3) Plaintiff's motion to amend, (Doc. 25), is **DISMISSED as moot**.
- (4) The case is referred back to Judge Arbuckle for further case management, including a decision regarding whether, in the interests of justice, Defendants should be given an opportunity to file a motion to dismiss Plaintiff's Privacy Act claim (Count VI).

S/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: March 28, 2023

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